

WESTERN STATE COLLEGE OF LAW
TORTS II - SPRING 2021
Section 132A
Professor Philip L. Merkel

Syllabus & Policies

Email: pmerkel@wsulaw.edu
Office Hours: To be announced.
Blackboard website: Password will be given in first class.

Course Materials

We will use the same materials as in Torts I.

Required:

The Torts Process (9th ed.), by Henderson, Pearson, Kysar.

Highly recommended:

Understanding Torts (5th ed.), by Diamond, Levine, Bernstein.

Course Coverage

Torts II is a two-credit course that builds on materials covered in Torts I. The course begins with a review of negligence and defenses to negligence. We will then cover a variety of new topics: strict liability, products liability, defamation, trespass to land, nuisance, and invasion of privacy. We will explore the social, economic, and political considerations that bear on the development of legal principles in these areas.

Course Objectives

The Torts II course has a number of major objectives. First, it will introduce you to substantive legal rules that courts and legislatures have developed over time in attempting to assess responsibility for losses suffered by individuals in various contexts. Second, the course will encourage you to critically examine these legal rules and help you to understand the economic, social, and political reasons behind them. Third, the course will sharpen your analytical skills, especially those of case reading and applying legal rules to actual controversies. Fourth, Torts II will assist you in mastering legal writing, especially test-taking skills.

Examinations and Grading

Torts II is a graded course. Your grade will be based mainly on your performance on a midterm examination and a final examination. I may also give short quizzes or other written assignments. Your scores on these exercises will be taken into account when I compute your final grade.

Requirements for Students in Zoom Sessions

As classes will be held on Zoom this semester, please observe the following requirements:

- Find a dedicated quiet space to attend Zoom sessions, to minimize the chances that you will be disrupted during the session.
- Arrive to class early and dressed as you would to attend an in-person class.
- Your camera must be turned on for the duration of the class. If desired, you can use the background settings in Zoom to create an artificial background that blocks the view of your space while still allowing you to be seen on camera.
- Come prepared, as you would for an in-person class. Participation in Zoom classes is as important as it is during an in-person class session.
- Do not multitask – stay focused on the class discussion – do not wander in and out of the Zoom session.
- If you have to miss a Zoom session, or arrive late or leave early, notify the professor in advance, as you would for an in-person class.
- If you have connectivity issues, whether it be long-term or short-term, that impact your ability to participate (e.g., if you are limited to dial-in without video), notify your professor so other accommodations can be explored.
- Do not post screenshots or recordings of any Zoom classes on social media. Such actions would constitute a violation of the Student Honor Code. If you need access to a recording of the Zoom session, please contact your professor.
- Sign into Zoom with the name under which you are registered for class. If you prefer to be called by a different name or nickname, please notify me in advance so you are not marked absent.

- Unless I instruct you otherwise, mute your microphone when you are not speaking. Unmute to speak or to ask or answer questions.
- Zoom classes are not for YouTube or Netflix. You should be actively engaged in answering questions, taking notes, writing down questions you wish to ask later during class or during office hours, etc. This will not only help you stay engaged and participating in class, it will also help your learning in the online format.
- If you are using your computer to take notes and/or using an e-casebook, remember that you may not be able to easily switch between those apps and the Zoom session. This could undermine your ability to pay attention to the class discussion. Figure out how you will resolve that technological issue before your first class session and consider possible modifications to your normal note taking style (e.g., handwritten notes) or using a two-screen set-up.
- Zoom has a number of tools available to you as a student: yes/no symbols, raise hand and thumb icons, share screen (with permission of the professor), chat windows, etc. Please familiarize yourself with those tools before class so that you can use them as requested by me. I will inform you about the ways in which you should use these tools in that particular class.
- I may use a number of interactive functions in Zoom to engage with students, e.g., polling questions, breakout rooms, as well as asking you to share your screen, type in the chat window. Like being called on in a live classroom, you are expected to participate fully in these activities and functions, i.e., answer polling questions, speak with your classmates in breakout groups, share your screen as requested, etc.

Attendance and Participation

Students must attend class regularly, prepare written case briefs, and participate in discussions.

A student can be absent no more than **three** class sessions. If you are unprepared, this counts as an absence. **A student with absences in excess of the limit will receive a failing grade for the course.** You are responsible for keeping an accurate count of your absences.

Commercial Study Aids

You may not recite from commercial outlines and case briefs or other commercial study aids.

Time Requirements for Class Preparation and the Study of Torts

ABA Standard 310 (b) (1) requires that students spend at least two hours of outside study time for every course credit hour. **This means you must devote at least four hours each week to the study of torts outside the classroom.** Your class preparation should include the following:

- Carefully read the sections of *Understanding Torts* relating to the subject(s) to be covered in a specific class.
- Carefully read every assigned case in the casebook, including assigned materials before and after each case.
- Produce *detailed written briefs* of every assigned case and accumulate the briefs in a brief notebook.
- Produce written answers to every assigned problem in the casebook.
- Read all materials posted on the course website.
- Produce written answers to exercises distributed in class and posted on the course website.
- Complete practice examinations that I may distribute before the midterm and final examinations.
- Take the initiative to delve further into topics by doing outside study, especially on topics that interest you.
- Contact the professor to discuss course materials, identify areas with which you are having difficulty, review practice examinations, etc.

Reading Assignments

The following assignments are from the casebook. **Read the entire assignment before the first class for each week.** You are responsible for the notes as well as the cases. **You must brief the cases in writing.** Do not prepare the problems unless I ask you to do so. Read the sections of *Understanding Torts* corresponding to the topics covered in the casebook assignments.

<u>Week</u>	<u>Topics and Assignments</u>
1	Course introduction; review of negligence; defenses to negligence; 406-414, 419-423, 427-430.
2	Strict liability; 481-489, 492-499, 507-512.
3	Products liability; 515-528.
4	Products liability (continued); 528-545.
5	Products liability (continued); 545-561.

6	Products liability (continued); 561-580.
7	Products liability (continued); 582-598.
8	Products liability (continued); 599-607, 608-616.
9	Midterm examination
10	Trespass to land and nuisance; 439-456, 466-476.
11	Defamation; 801-833
12	Defamation (continued); 833-855.
13	Invasion of privacy; 859-874.
14	Invasion of privacy (continued); course wrap-up.
15	Reading week
16	Final Examination

DISABILITY SERVICES STATEMENT:

Western State College of Law provides accommodations to qualified students with disabilities. The **Disabilities** Services Office assists qualified students with disabilities in acquiring reasonable and appropriate accommodations and in supporting equal access to services, programs, and activities at Western State College of Law.

To seek reasonable accommodations, a student must contact Senior Assistant Dean Donna Espinoza, Student Services Director and Disabilities Services Coordinator, whose office is in the Students Services suite #111. Dean Espinoza's phone number and email address are: (714) 459-1117; despinoza@wsulaw.edu. When seeking accommodations, a student should notify Dean Espinoza of her or his specific limitations and, if known, her or his specific requested accommodations. Students who seek accommodations will be asked to supply medical documentation of the need for accommodation. Classroom accommodations are not retroactive, but are effective only upon the student sharing approved accommodations with the instructor or professor. Therefore, students are encouraged to request accommodations as early as feasible with Dean Espinoza to allow for time to gather necessary documentation. If you have a concern or complaint in this regard, please notify Dean Espinoza; or please notify Dean Allen Easley at aeasley@wsulaw.edu or (714) 459-1168. Complaints will be handled in accordance with the College of Law's "Policy against Discrimination and Harassment."

Western State College of Law – Programmatic Learning Outcomes

Western State College of Law’s curriculum is designed so that every student achieves a level of competency prior to graduation in each of the eight Programmatic Learning Outcomes listed below:

(1) **Doctrinal Knowledge**

Students will demonstrate knowledge of substantive and procedural law in the core curriculum subjects, including Contracts, Criminal Law, Criminal Procedure, Torts, Real Property, Business Association, Evidence, Civil Procedures, Constitutional Law, Estates, Community Property, Remedies, and Professional Responsibility.

(2) **Practice Skills**

Students will demonstrate the development of other law practice skills. Each student’s chosen outcomes within this category will be varied based on the student’s particular interests, coursework and work experiences. They may include, but are not limited to, the following topics: oral presentation and advocacy; interviewing; counseling; client service and business development; negotiations, mediation, arbitration, or other alternate dispute resolution methods; advanced legal research and writing (excluding purely academic papers and the first four units earned in introductory first-year legal research and writing class); applied legal writing such as drafting contracts, pleadings, other legal instruments; law practice management or the use of technology in law practice; cultural competency; collaboration or project management; financial analysis, such as accounting, budgeting project management, and valuation; cost benefit analysis in administrative agencies; use of technology, data analyses, or predictive coding; business strategy and behavior; pre-trial preparation, fact investigation, such as discovery, e-discovery, motion practice, assessing evidence, or utilizing experts; trial practice; professional civility and applied ethics; a law clinic that includes a classroom component; or a legal externship that includes a classroom component.

(3) **Legal Analysis**

Students will demonstrate the ability to identify the factual and legal issues implicated by a fact pattern and to appropriately use cases (including identifying the salient features of an appropriate precedent case, identifying legally significant similarities or differences between the precedent case and a fact pattern and explaining why those are legally significant) and rules (including the ability to connect legally significant facts in a fact pattern to the rule) to predict how a court would decide the issue. Students will also demonstrate the ability to identify and evaluate the public policies of a precedent case or rule, and be able to evaluate how public policy can impact the application of a rule to the legal issue.

(4) Legal Research

Students will demonstrate the ability to locate relevant legal authority using a variety of book and electronic resources, and to properly cite to such legal authority.

(5) Communication

Students will demonstrate the ability to communicate both orally and in writing in a manner appropriate to a particular task to effectively convey the author or speaker's ideas. This includes audience sensitivity in written and oral communication (the ability to adopt a tone, style and level of detail appropriate to the needs, knowledge and expertise of the audience); and written communication basic proficiency (the ability to use the conventions of grammar, spelling, punctuation, diction and usage appropriate to the task and sufficient to convey effectively the author's ideas).

(6) Advocacy of Legal Argument

Students will demonstrate the ability, in both oral and written formats, to evaluate the legal, economic and social strengths and weaknesses of a case and use case and statutory authority as well as public policy to persuade others. Making policy-based arguments includes the ability to identify and evaluate the public policies of a precedent case or rule and their implications, and be able to assert such appropriate arguments to support a particular application or distinction of a precedent case to a legal controversy or a particular resolution of the application of a rule to the legal controversy.

(7) Client Sensitivity and Cultural Competency

Students will demonstrate an awareness of clients' needs and goals, including a sensitivity to clients' background and circumstances (including, but not limited to, socio-economic, gender, race, ethnicity, educational, disability and/or religious background(s)), the ability to make decisions that reflect an appropriate focus on those needs and goals, and awareness that cultural issues may affect the relevance of facts and application of the law.

(8) Legal Ethics

Students will demonstrate the ability to identify ethical issues in law practice contexts and make appropriate decisions to resolve such issues.